HIGHWAYS AND TRANSPORTATION
EXHIBIT NO. 3
DATE 2-3-2011
BILL NO. SB 235

MONTANA TRIAL LAWYERS ASSOCIATION

JUSTICE FOR ALL

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February 3, 2011

Senate Highways and Transportation Committee

RE: Vote No On SB 235

MTLA supports seatbelt usage as a general safety precaution - trial lawyers were in the forefront of getting automakers to install seatbelts in vehicles, through litigation and regulation. But we oppose this bill because by making nonuse of seatbelts a negligent act, it is an overly punitive bill that further harms the person who has already been harmed due to the negligent actions of another driver. It does little, if anything, to promote more seatbelt use, and rewards the wrongdoer by limiting their, and their insurer's, responsibility to pay for the harm they caused.

Let's be up front about what this bill is not about:

It is not about reducing insurance rates - no insurers will testify in public that insurance rates will go down if you pass this legislation, because they won't go down. If they would they would be here with actuarial data telling you just how much they would go down.

It is not about reducing the costs of litigation - this bill will not reduce the number of lawsuits, it will likely increase litigation and will increase the costs due to expanding the litigation to determine use or nonuse of seatbelts. Both sides will have to hire physicists/accident reconstructionists, biomechanical engineers and doctors.

It is solely about reducing the liability of the wrongdoer - the one who is responsible for causing the crash, & their insurer.

It's important to remember, we're talking about cases where the person injured and not wearing a seatbelt is not the negligent party in the accident - the person who runs a stop sign, the drunk that heads the wrong way up a road, they are the negligent party.

It affects not just persons who are flaunting the seat belt law. Have you ever done this, you and spouse are in car, stopped at a light, one of the kids has dropped a toy or bottle, and the spouse in the passenger seat, unbuckles to lean back and take care of the child. I bet most of you or your spouses have even done this while the vehicle was moving.

What about those cases where the driver takes off out into traffic before the passengers have had a chance to buckle up? What about those kids that unbuckle themselves while their parents are driving down the road? What about the spouse that unbuckles briefly to grab something from the backseat for the driving spouse?

This bill means that nonuse of seatbelts constitutes negligence, you are putting the innocent driver and passengers in the position of being partially responsible for **injuries that they would not have received but for the negligence of someone else.**

As written, this bill also raises questions of comparative negligence – it puts the jury in the position of **apportioning fault for the accident.** But, not wearing a seat belt **does not contribute** to the cause of the accident.

This bill will increase litigation costs. Cases that settle now - where liability is clear, like a negligent driver running a stop sign - will be litigated instead of settled if this bill passes. It will not be good enough to get a settlement, that the person who is injured is lawfully stopped at a stop light and is rear ended by a negligent driver. With this bill you will have to litigate whether the victim was some how negligent for not wearing a seatbelt, and if so, how negligent he was - 5%, 10%, 15%, 25%, 51%? Also, **the bill does not say that the only damages to be reduced are those attributable to nonuse of seatbelts - all damages could be reduced, even if they had no relation to seatbelt use.**

This bill would prevent timely payment of medical and chiropractic bills. Currently if liability is reasonably clear, the insurer must pay the medical bills promptly - even before the entire matter is settled or goes to court. (*Ridley* decision) With this bill, insurers will say that liability is not reasonably clear when nonuse of seatbelts is a possible issue. That means medical bills won't be paid promptly - harming not only the injured person, but also their medical care providers. The same would be true of lost wages (*Dubray* decision).

Before the *Ridley* decision insurers would all too often use the withholding of medical payments as a means to get injured people to settle their claims for less than they were legally entitled to - settle now or this will be going to court years from now. This bill would allow those tactics to be revived - because nonuse of a seat beat is negligence under this law and therefore gives insurance companies a valid reason to skirt our good faith laws requiring prompt payment when liability is reasonably clear.

There are only 15 states that make nonuse of seatbelts admissible for determination of either negligence or reduction of damages. One third of those states rank below Montana in U.S. Department of transportation figures for seatbelt usage. 60% of the top ten states for seat belt usage are like Montana and do not allow for reduction of damages for nonuse of seat belts.

Additionally, many of the states that allow evidence of seatbelt usage also put a cap of 5% of the damages as the most that can be attributed to the nonuse of seatbelts - **recognizing that the injured person should not be unduly punished when it was someone else who caused the accident, with SB 235 there is no limit.** AND, other states limit the damage reductions to those that can be proven to be attributable to the nonuse of seat belts - SB 235 has no such limitation.

If the idea of this bill is to have a consequence for nonuse of seatbelts, here is an idea - increase the fine 10 times or 20 times it's current amount for drivers involved in accidents. How about making nonuse of seatbelts a primary offense? **Those are consequences, but it does not relieve the wrongdoer of their responsibility.** What's next, a person who owns a Checy Geo should receive less damages because they should have known that they would suffer less harm when a drunk hit them than if they were driving a Hummer?

In tort law the old adage is "you take the victim as you find them" – you are responsible for the harm you cause, whether the victim has brittle bones or whether they are wearing a seatbelt. **This bill does not promote safety, it only rewards the wrongdoers, like the drunk drivers (and their insurers), and relieves them of full responsibility and accountability for the crash and damages they caused.**

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JAMES T. TOWE
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February 3, 2011

Montana Senate Highways and Transportation Committee — Hand-delivered

Re: Senate Bill 235

Dear Members of the Senate Highways and Transportation Committee:

I am writing to voice my opposition to Senate Bill 235. I represent a nice lady who was a passenger in a vehicle that was parked beside a building. She and the driver entered the car. My client began to fasten her seatbelt. Unbeknownst to my client, however, the driver mistakenly put the vehicle into drive instead of reverse. When she hit the accelerator, the car went forward instead of backward. She apparently panicked and gave it more gas, driving the car over a curb and into a brick wall. My client, who was trying to fasten her seatbelt, was injured. I am sure that there are other fact patterns one can imagine where the person who either failed to or did not use a seatbelt was either not at fault or the non-use had nothing to do with the circumstances of the wreck or the injuries. I do not see how this bill will reduce insurance rates or litigation and, in fact, will probably have the opposite effect. Drivers of motor vehicles should be absolutely responsible as required by Montana's Motor Vehicle Statutes which make insurance companies absolutely liable for injuries caused by negligent drivers. Passage of this bill will encourage mischief by suggesting that the alleged non-use or improper use of a safety belt was negligent on the part of somebody who may be completely innocent or who may have been, for example, T-boned from the side such that any seatbelt non-use had nothing to do with the injuries or death involved.

Thank you for this opportunity to present my viewpoint.

Sincerely,

TOWE LAW OFFICES

James T. Towe
JTT/rac

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February 2, 2011

Hand Delivered

Montana Senate
Senate Highways and Transportation Committee
State Capitol
Helena, MT 59620

Re: SB 235 (allowing admissibility of seat belt use as evidence in civil cases)

Dear Members of the Senate Highways and Transportation Committee,

I am writing on behalf of two of my clients, Stefanie Cramer and Jason Hanson of Kalispell, MT. While Stefanie and Jason would have both liked to appear in person to testify at the committee hearing tomorrow, it was not possible to rearrange their work schedules on such short notice. I am writing to encourage the committee to vote against SB 235, which would allow the use or nonuse of seatbelts to be admissible in any civil action for wrongful death, personal injury, or property damage resulting from the use or operation of a motor vehicle.

On December 4, 2009, Stephanie Cramer was a passenger in her own 2009 Chevy Silverado full-size truck, which was being driven by her fiancé, Jason Hanson. They were traveling east on Highway 2 West of Kalispell, headed to Whitefish, MT for Jason's office Christmas party with Pacific Steel and Recycling. They had just pulled out onto the highway after making a stop, and had not put their seatbelts on. Frank Gonzales, who was traveling in the opposite lane in his parents' full-sized truck, suddenly swerved, crossed the centerline, and hit Stephanie and Jason head-on. Stephanie and Jason were seriously injured as a result of the accident, both trucks were totaled, and Mr. Gonzales died.

Stefanie was more seriously injured than Jason, sustaining an open fracture of her left femur, a nondisplaced fracture of the right hip, and anterior right knee pain. She underwent surgery to place a rod in the left femur from the intracondylar notch to the hip joint. After being hospitalized for several days she then required 24-hour domiciliary care for another six weeks. Several months later she had to undergo another surgery to remove the distal locking screws, and debridement of the bone fragments and scar tissue around the knee that were impeding movement. She has since had to continue with physical therapy to overcome limitations to her posture and gait that exist as a result of her left leg being 1 ½ inches shorter than the right. She will likely need another surgery to have the rod removed and will likely need a knee replacement as well due to the extent of her fracture. She has incurred over $85,000 in medical expenses to date, not including the future surgery to remove the rod, attendant physical therapy, and a future

knee replacement, which will likely place her medical expenses well over $125,000. Stefanie also incurred over $20,000 in lost wages due to her inability to work as a dental hygienist.

Under Montana law, this was a clear liability case, and pursuant to the Montana Supreme Court decision in *Ridley*, the auto insurers properly advance paid Stefanie's medical expenses and lost wages. While auto insurance was available and Stefanie recovered policy limits, her recovery was barely enough to cover the harm sustained as a result of the collision.

As you are aware, current Montana law did not allow the fact that Stefanie and Jason were not wearing their seatbelts to be considered in determining Mr. Gonzales' liability for blatantly crossing the centerline and causing them significant injuries.

However, Jason was cited and penalized pursuant to Mont. Code Ann. §61-13-104, for driving his car without he and Stefanie being properly belted. This penalty appropriately holds a person who operates a motor vehicle without a seatbelt accountable for their conduct. If the goal of SB 235 is highway safety, which presumably it is since it is in this committee, then perhaps a more appropriate thing to do is increase the penalty for failing to wear a seatbelt, and have the penalty apply to everyone in the vehicle without a seatbelt, not just the driver.

All SB 235 does is further punish an injured or dead person, harmed through no fault of their own, by potentially reducing their recovery and thereby absolving the conduct of the actual wrongdoer. Moreover, it will likely vastly increase the cost of litigation for both parties. Allowing such evidence in this case would have provided the auto insurers with the opportunity to argue that this was not a "clear liability" case because it was unknown whether the conduct of not wearing a seatbelt contributed to the injuries. Both parties would have had to hire biomechanic and medical experts to address whether wearing a seatbelt would have mitigated Stefanie's injuries. In the meantime, the insurers would not have had to advance pay Stefanie's medical expenses and wage loss, to her immense detriment, and settlement would have been impossible. We would have had to bring the case to trial to fully recover on behalf of Stefanie, furthering overwhelming already overburdened District Courts.

Please feel free to call with any questions, and I hope you will consider this testimony in opposition to SB 235.

Sincerely,

Amy Eddy
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